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10/594,354	03/22/2008	Steven Hepworth	12283/15451	4653

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EXAMINER
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QUINN, COLLEEN M

ART UNIT	PAPER NUMBER
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3634

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04/19/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/594,354	<b>Applicant(s)</b> HEPWORTH ET AL.	
	<b>Examiner</b> COLLEEN M. QUINN	<b>Art Unit</b> 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,11-15 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,11-15 and 18-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 8, 11-18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaffel (US 3,830,340) in view of Wiehe, Jr. (US 5,289,897) and Steffe (US 4,564,178). Schaffel discloses a gripping apparatus (figure 1) comprising two or more gripping members (17) each mounted on respective support means (3) at a first end thereof (figure 1), the support means including one or more support members (3, 4; figure 1); pivoting means (7) connecting the support means at a location offset from the gripping members (figure 1), such that the gripping members are moved towards each other to exert a grip on a workpiece positioned between the same as the distal ends of the support means are moved apart (figure 1 & col. 3, lines 11-16) by exerting a force on the support means or apparatus to position the support means; the distal ends of the support means being in contact with a supporting surface (ground/floor) at least during the gripping of the workpiece (figures 1 & 3); resistance means (spiked ends of 4) are provided on the distal end or ends of at least one of the support means to engage a supporting surface and restrict the movement apart of the support means (figure 1); the resistance means including pointed protrusion ends for spiking/gripping into a supporting surface; the support means includes one or more support members (3,4) in the form of any or any combination of tubes, struts, and/or

other resilient members (figure 1); one or more work support members (16) are provided adjacent the gripping members capable of supporting the workpiece when not gripped by the gripping members; the one or more work support members are pivotable/tiltable (at 1; figure 1); the gripping members are detachably connected (18) to the support means (figures 1 & 2); the gripping members and support means are provided with attachment means and/or complimentary receiving means (pivot pins & holes) to allow the gripping members to be connected to the support means (figures 1 & 2) and wherein the attachment means and receiving means include nuts & bolts (figures 1 & 2). Schaffel does not teach a movement means for transporting the apparatus or a plate for forcing the gripping members together.

However, Wiehe, Jr. teaches a gripping apparatus (figure 2) comprising support members (30a-c, 32a-c) having gripping members (38) at the upper ends and pivoting means (40a, b, 48a,b) below on the gripping members on the support means (figures 2) such that the pivoting means includes a means to allow a user to apply an external force on the gripping members towards each other wherein the means for allowing applying external force is plate (40a, b) angled towards the gripping members (figure 2).

Additionally, Steffe disclose a workpiece gripping apparatus (figure 1) comprising pivotally connected support means (10, 12) with gripping means (37, 38, 40) atop the support means and wherein the distal ends of the support means are provided with movement means (figures 1 & 2) to allow movement of the same along a supporting surface; wherein the movement means are wheels/rollers (20).

Therefore it would have been obvious to one of ordinary skill in the art to provide the apparatus of Schaffel with pivoting means that include an angled plate as taught by Wiehe, Jr. allowing for a user to apply external force on the gripping apparatus and therefore the gripping members in order to provide for greater stabilization while working; and with movement means/wheels as taught by Steffe in order to provide a more easily transportable gripping apparatus, readily moved from site to site as needed.

Claims 2 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaffel in view of Wiehe & Steffe as applied to claims 1, 3, 8, 11-18 and 21 above, and further in view of Telban (US 3,887,036). Schaffel does not disclose the pivoting means to be angled downwardly when the distal ends of the support means are spread apart, the gripping means to be separated when the apparatus is collapsed and lifted or the gripping members to grip a workpiece under the weight of the apparatus.

However, Telban teaches a gripping apparatus (figures 1-3) comprising support means (10), pivoting means (13-15), gripping means (16) and work support members (11-12) wherein the pivoting means includes pivotally connected members (13a; figures 1) which are angled downwardly towards the distal ends of the support means at least when the gripping members are in a closed condition (figures 1-3); wherein the gripping members move apart from each other when the apparatus is collapsed and lifted from the supporting surface (figure 1); wherein the apparatus can be lifted to move apart the gripping members, without removal from a supporting surface (such as moving just the one shorter leg in a situation as in figure 3), to allow the insertion of a workpiece

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between the gripping members (figures 1-3), providing an apparatus that can be easily manipulated to move the support means or gripping members as needed on site.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the apparatus of Schaffel with the pivoting means and clamping arrangement of Telban in order to provide a more versatile and easily manipulated apparatus for holding work pieces.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schaffel, Wiehe & Steffe as applied to claims 1, 3, 8, 11-18 and 21 above, and further in view of Hill (US 5,628,382). Schaffel does not teach tubular connections for the attachment means.

However, Hill teaches a gripping apparatus (figure 1), comprising support means (14), pivoting means (46), gripping means (figures 4-6) and work support members (24); wherein the gripping members are detachable connected to the support means via tubular attachment means (18) for receiving the upper ends of the support means (figures 4-6) and connecting together concentrically (figures 4-6), providing an easily attachable/detachable gripping member arrangement for a gripping apparatus.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the gripping apparatus of Schaffel with tubular concentrically connecting gripping members as taught by Hill in order to provide gripping members than can easily be attached or detached as needed or for swapping out parts.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schaffel, Wiehe & Steffe as applied to claims 1, 3, 8, 11-18 and 21 above, and further in view of Lange (US 2,812,219). Schaffel does not disclose the attachment means to alternatively comprise a dovetail joint connection for easily sliding on and off the gripping members.

However, Lange teaches a work piece holding apparatus (figure 1) comprising support means (9) and members for holding the workpiece (5, 15) wherein the members comprise a dovetail joint (figures 1, 2 & 4) for sliding the members in and out for easy replacement and assembly.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the gripping apparatus of Schaffel with dovetail joint connections as taught by Lange for the gripping members in order to provide a connection that allows for easy replacement and assembly of the different gripping members.

Wiehe & Steffe as applied to claims 1, 3, 8, 11-18 and 21 above, and further in view alone with Official Notice. Although Schaffel does not particularly disclose different shape or material options for the gripping members, Schaffel does teach that the gripping members' faces can be shaped differently depending on the purpose of use (col. 4, lines 15-19). The Examiner takes Official Notice and cites MPEP 2144.04 IV. *B. Changes in Shape* and 2144.07 *Art Recognized Suitability for an Intended Purpose* and asserts that it would have been obvious to one of ordinary skill in the art to use an appropriately shaped gripping member for different jobs (i.e.: flat shaped gripping faces for square beams, arcuate faces for pipes, logs, etc. etc) and made of appropriately

strong material since one would find it obvious that different shapes and different materials would be required for different jobs- obviously a gripping member for a lightweight 2X4 wooden beam would not be appropriate for a 200lb or heavier log that needed to be held in the gripping apparatus.

Therefore, the Examiner takes Official Notice that it would have been obvious to one of ordinary skill in the art to provide the gripping apparatus of Schaffel with differently shaped and constructed gripping members for different jobs and holding different work pieces. Examiner acknowledges applicant's acceptance of examiner's Official Notice that different shapes and materials of gripping apparatuses are old and well known. This fact is now accepted as admitted prior art as no arguments directly rebutted this fact. Although the applicant argued against the use of Schaffel as the primary reference (because it does not teach all of the newly amended claim language), the applicant did not argue against the point that changes in gripping members' shape and materials to suit the shape and nature of the workpiece are old and well known to one of ordinary skill in the art. Thus the issues are considered admitted prior art.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaffel, Wiehe & Steffe as applied to claims 1, 3, 8, 11-18 and 21 above, and further in view of Rich (US 2,230,015). Schaffel does not disclose the pivoting member to alternatively comprise a linkage arrangement with slot and locking member.

However, Rich teaches a collapsible stand apparatus (figures 1) comprises support means (9, 17) connected by pivot means (10 and 20-27), wherein the pivoting

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means includes a first member (23) connected to first support means (17) via locking means (20,25, 26, 27), a second member (10) connected to second support means (9), the first member pivotally connected to the second member (figures 1 & 2), wherein the locking means comprises a slot (25) in the first member (figures 1 & 2) and a locking member (27) capable of extending through and sliding along the slot (figures 1 & 2), for locking at least part of the support means in a particular position (figures 1), providing an easily operated lockable pivoting means for spacing and holding the support means in position.

Therefore it would have been obvious to one of ordinary skill in the art to provide the support means of Schaffel with a slot and locking linkage as taught by Rich as an alternative pivoting means that easily pivots the support means securely holds them in position by its locking means.

Claims 25-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaffel, Wiehe, Steffe and Rich as applied to claims 1, 3, 8, 11-18, 21, 23 and 24 above, and further in view of Alexander (US 4,238,001). Schaffel does not disclose the top portions of the support means which include gripping members, are hingedly separated from the bottom portions, which include the pivoting means, by hinging means to allow for independent movement of the gripping means from the support means.

However, Alexander teaches a gripping apparatus (figure 1) comprising support means (21, 23, 25, 27) and gripping means (31, 53, 55) wherein the top portions of the

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support means which include gripping members (figures 1 & 3), are hingedly separated from the bottom portions (figures 1 & 3), by hinging means (figures 3, 4 & 6), wherein when at least part of the support means is held in one position, the hinging means allows the gripping members to move independently without moving the lower end of the support means; and allowing opposite faces to move independently (figures 1-6) from open to closed positions.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the gripping apparatus of Schaffel with a hinged connection as taught by Alexander between the upper portion of the support means with the gripping members and the lower portion with the pivoting means so that the portions could be adjusted independently.

### ***Response to Arguments***

Applicant's arguments filed February 14<sup>th</sup>, 2011 have been fully considered but they are not persuasive. The applicant's arguments are primarily directed to the amended claim language of amended claim 1 and how the primary reference of Schaffel does not teach the "movement means" or "plate" now included in claim 1. However, although the amended language of claim 1 is new to claim 1, it is not new the claim set overall- each of the features added to claim 1 were previously presented in now cancelled claims 7, 9 and 10- all of which were rejected by prior art. The above rejection asserts that these features are found obvious over prior art of record as it would be

obvious to add wheels to a portable apparatus and include a stepping plate for pressing down/ forcing a pivotal member into position.

The applicant argues that Wiehe, Jr. does not teach a plate on which the user may step to apply pressure to force the gripping pieces together. However, although not directly stated in those words, Wiehe teaches a "vierendeel truss construction" and vierendeel truss construction works by pivotal beams transferring pressure applies to points of the truss to squeeze the other elements together in response and in support- so although plates 40a & 40b are called "stabilizer beams" by Wiehe, it is obvious that these stabilize the beam by transferring applied pressure to the rest of the truss, which in turn tightens the grippers.

In response to applicant's other art related arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The applicant argues against each individually saying that each of the references does not teach all of the elements claimed and argues against elements those references were not cited for (i.e. arguing Schaffel does not teach movement means when Steffe was cited for movement means).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLLEEN M. QUINN whose telephone number is (571)272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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